

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

DEC 14 2011

**Part of
Public Record**

CARGILL, INCORPORATED

Complainant,

v.

BNSF RAILWAY COMPANY

Defendant.

Docket No. 42120

231485

**BNSF RAILWAY COMPANY'S PETITION
FOR ORDER DIRECTING SIMULTANEOUS FINAL BRIEFS
ON LIABILITY ISSUES**

Pursuant to 49 C.F.R. § 1117.1, Defendant BNSF Railroad Company ("BNSF") respectfully requests that the Board direct Complainant Cargill, Inc. ("Cargill") and BNSF to file simultaneous final briefs in the liability phase of this case within 30 days after the service date of the Board's order granting this request. BNSF further requests that the final briefs be limited to no more than 30 pages with no attachments, exhibits, or new evidence.¹

This is a case of first impression that raises multiple issues for resolution by the Board. The Board recognizes that final briefs assist in focusing the evidence, thereby facilitating the Board's resolution of the outstanding issues, and for this reason has consistently permitted the filing of final briefs upon request of a party. *See, e.g. Public Service of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Co.*, STB Docket No. 42057, 2003 WL 21872590 (served Aug. 8, 2003) ("In complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to

¹ Counsel for BNSF conferred with counsel for Cargill, and counsel for Cargill indicated that Cargill does not support BNSF's request.

greater efficiency in analyzing the record. Specifically, a single round of simultaneous briefs will, without further delaying the proceeding, allow each party to set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute.”); *Duke Energy Corp. v. Norfolk Southern Co.*, *Duke Energy Corp. v. CSX Transportation, Inc.*, *Carolina Power & Light Co. v. Norfolk Southern Railway Co.*, STB Docket Nos. 42069, 42070, 42072, 2002 WL 31833592 (served Dec. 13, 2002) (same); *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Co.*, STB Docket No. 42056, 2002 WL 1057999 (served May 28, 2002) (same); *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Co.*, STB Docket No. 42054, 2001 WL 1580262 (served Dec. 12, 2001) (same).


Even when a party has objected to the other party’s request for simultaneous final briefs, the Board and its predecessor have consistently granted the request, finding that final briefs will assist the Board and rejecting arguments that final briefs are unnecessary, duplicative or will cause delay in the proceeding. *Wisconsin Power and Light Co. v. Union Pacific Railroad Co.*, STB Docket No. 42051, 2000 WL 1708761 (served Nov. 15, 2000) (granting UP’s request for final simultaneous briefs and rejecting WPL’s arguments that “closing briefs would be redundant and unnecessarily expensive and would result in further delay”); *FMC Wyoming Corp. and FMC Corp. v. Union Pacific Railroad Co.*, STB Docket No. 42022, 1999 WL 495935 (served July 2, 1999) (same); *Potomac Electric Power Co. v. CSX Transportation, Inc.*, STB Docket No. 41989, 1997 WL 728420 (served Nov. 24, 1997) (STB grants request for final briefs despite Complainant’s contention that such briefs “are unnecessary in light of the extensive argument submitted during the evidentiary phase of th[e] proceeding, . . .”); *West Texas Utilities Co. v. Burlington Northern Railroad Company*, No. 41191, 1995 ICC Lexis 236 (served Sept. 8, 1995)

(hereafter "*West Texas Utilities*") ("The purpose of a brief is not to give either side a tactical advantage by allowing it the 'last word;' it is to assist the Commission in evaluating the record compiled in the proceeding so that it can make a fair and informed decision.").

While final briefs are particularly common in rate cases, the Board's predecessor noted that they were also appropriate in "other adjudicatory proceedings." *West Texas Utilities* at *3. BNSF's request for a 30 page limit on the briefs and a filing date within 30 days after the Board issues a decision granting BNSF's petition is also consistent with prior Board decisions granting requests for final briefs and will not result in unnecessary delay in the resolution of this matter.

Respectfully submitted,

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December 13, 2011

ATTORNEYS FOR DEFENDANT

Certificate of Service

I hereby certify that on this 13th day of December, 2011, I have served a copy of the foregoing **BNSF RAILWAY COMPANY'S PETITION FOR ORDER DIRECTING SIMULTANEOUS FINAL BRIEFS ON LIABILITY ISSUES** on the following by hand delivery and in pdf format via e-mail:

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